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Deutsche Bank National Trust Company, as Trustee for Morgan Stanley, MSAC 2007-HE5
10 09-71757

11 **UNITED STATES BANKRUPTCY COURT**
12 **DISTRICT OF NEVADA**

14 In Re:

Bk Case No.: 10-14450-bam

15 Mindy Spears

EX PARTE APPLICATION FOR AN ORDER
PURSUANT TO 362 (4) (A) (i)

17 Date:

18 Time:

19 Chapter 7

20 Debtor.

21 Deutsche Bank National Trust Company, as Trustee for Morgan Stanley, MSAC 2007-HE5,
22 Secured Creditor herein, ("Secured Creditor" or "Movant" hereinafter), requests from this Court an
23 Order Confirming that the Automatic Stay of 11 U.S.C § 362 has not arisen with respect to the Debtor
24 due to the multiple filings as evidenced below. That on or about March 18, 2010, the above named
25 Debtor filed this instant Chapter 7 Petition in Bankruptcy with the Court.
26

MEMORANDUM OF POINTS AND AUTHORITIES

1. Secured Creditor is the current payee of a promissory note dated December 4, 2006 in the principal sum of \$293,000.00 ("Promissory Note" herein), secured by a Real Property Trust Deed of same date ("Trust Deed" herein) upon property generally described as 3008 Periscope Court, Las Vegas, NV 89117, and legally described as follows:

PARCEL ONE:

LOT 80 IN BLOCK 3 OF THE BLUFFS UNIT 11C AS SHOWN BY MAP THEREOF ON FILE IN BOOK 41 OF PLATS, PAGE 68, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA AND AS AMENDED BY CERTIFICATE OF AMENDMENT RECORDED APRIL 24, 1989 IN BOOK 890424 AS DOCUMENT NO. 00556, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT ON AND OVER THE "COMMON AREA" AS DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS TO WHICH REFERENCE IS HEREAFTER MADE FOR ACCESS, USE, OCCUPANCY, ENJOYMENT, INGRESS AND EGRESS OF THE AMENITIES LOCATED THEREON SUBJECT TO THE TERMS AND PROVISIONS OF SAID DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JANUARY 20, 1987 IN BOOK 870120 AS DOCUMENT NO. 00088. THE COMMON AREA IS FOR THE USE OF OWNERS OF LOTS WHICH ARE SUBJECT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND IS NOT FOR THE USE OF THE GENERAL PUBLIC.

(“subject property” herein).

2. True and correct copies of the Note and Deed of Trust are attached hereto as Exhibit's "A" and "B" and incorporated herein by reference for all purposes.

3. The debtor filed the instant case on March 18, 2010.

4. Prior to filing of the present case, the Debtor filed an additional case within a one-year period as follows: Chapter: 13. Case Number: 09-21449, Filed: June 30, 2009. District of Nevada. Date dismissed on February 5, 2010.

5. Prior to filing of the present case, the Debtor filed an additional case within a one-year period as follows: Chapter: 13. Case Number: 08-21558, filed October 2, 2008, District of Nevada. dismissed on April 24, 2009.

1 6. Secured Creditor requests that the Court enter an Order confirming that there is no
2 Automatic Stay affecting Secured Creditor with respect to the Debtor.

3 7. Further, Bankruptcy Code Section 362(j) allows as follows:

4
5 On request of a party in interest, the court shall issue an order under subsection
6 (c) confirming that the automatic stay has been terminated.

7 8. Additionally, Bankruptcy Code Section 362 (4)(A)(i) and (ii) states as follows:

8 if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or
9 more single or joint cases of the debtor were pending within the previous year but were dismissed, other
10 than a case refiled under section 707 (b), the stay under subsection (a) **shall not go into effect upon the**
11 **filing of the later case; and**

12 (ii) **on request of a party in interest, the court shall promptly enter an order**
13 **confirming that no stay is in effect; (*emphasis added.*)**

14 (B) if, within 30 days after the filing of the later case, a party in interest requests the court may
15 order the stay to take effect in the case as to any or all creditors (subject to such conditions or
16 limitations as the court may impose), after notice and a hearing, only if the party in interest
17 demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

18 9. As stated above, Debtor was a Debtor in more than 2 prior cases pending within a
19 preceding one year period of time prior to the institution of the present case, and that those prior cases
20 were dismissed. In fact, the Debtor was a Debtor in multiple prior cases pending within a preceding one
21 year period of time prior to the institution of the present case, and all of those prior cases were
22 dismissed.

23 10. The Debtor did not seek an order to extend the automatic stay.

24 11. Secured Creditor respectfully requests an order from the Court confirming that the
25 Automatic Stay never arose as to Secured Creditor, and that Secured Creditor may proceed with
26

1 collection on the note, including but not limited to foreclosure and an action to recover possession of
2 the subject property described herein.

3 WHEREFORE, for all of the foregoing reasons, Secured Creditor, Wells Fargo Bank, NA
4 requests the Court to enter an Order confirming that the Automatic Stay never arose and is otherwise
5 terminated, with respect to the Debtor and the subject property described in this motion.
6

7
8 Respectfully submitted, this 24 day of MAR, 2010.
9

10 WILDE & ASSOCIATES
11

12 By: 
13 Gregory L. Wilde, Esq.
14 Attorney for Secured Creditor
15 212 S. Jones Boulevard
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18 Copies of the foregoing mailed this 24 day of March 2010
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